IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 119 OF 2002.

1. Shri Vassudev Pandurang Naik,
Major of age, married,
Indian National.

2. Mrs. Vassanti Vassudev Naik,
Major of age, married,
Indian National,
Both r/o H. No. 16, Ward No.7,
Tarcar Road, Bhatlem,
Panaji – Goa. .... Petitioners.

Versus

1. Shri Krishna Vithoba Xete Tilve,
(since deceased, through his
legal heirs):-

1(a) Mrs. Radhabai Krishna Xete Tilve,
major of age, married,
Indian National, r/o Bhatulem,
Panaji, Goa.

(b) Mrs. Jyotam U. Tople.

© Mr. Ulhas B. Tople,
both major, r/o Flat No. G-4,
Green Valley, Cooperative
Housing Society, Vollant,
Porvorim, Betim, Bardez, Goa.

(d)Mrs.Sushma R. Narvekar.

(e) Mr. Ravindra N. Narvekar,
both majors, r/o E-4,
Sanchayani Anant Vishava,
Cooperative Housing Society,
Vidhyanagar, Margao, Goa.

(f) Mrs. Neema N. Kanekar.

(g) Mr. Nandakishor G. Kanekar,
both majors, r/o E-7, Rosadel
Enclave, Old Market,,
Margao, Goa.

(h) Mr. Vithal alias Satish K.Tilve.

(i) Mrs. Manuja V. Shet Tilve.

(j) Ms Seema K. Shet Tilve,
all major, r/o House No.19,
Bhatlem, Panaji, Goa.

2. Mrs. Radhabai Krishna Xete Tilve,
Major of age, married,
Indian National,
both r/o Bhatlem, Panaji, Goa.

3. The Administrative Tribunal of Goa,
Panaji, Goa. ..... Respondents.

Shri S.S. Kantak with Ms. R. Chodankar, Advocates for the Petitioners.

Shri P.A. Kholkar, Advocate for the Respondents No.1(a) to 1(j) and 2.

CORAM: A. P. LAVANDE, J.

DATE: 23rd MARCH, 2006.

ORAL JUDGMENT:

By this petition under Articles 226 and 227 of the Constitution of India the petitioners take exception to Judgment and Order dated 3.7.2001 passed by the Administrative Tribunal, Goa at Panaji in Mundkar Revision Application NO. 107/2000. During the pendency of this petition, original respondent No.1 expired and his legal representatives have been brought on record.

2. Briefly, the facts which are relevant for the disposal of the petition are as under :-

The petitioners herein filed an application for declaration of mundkarship bearing Case No.MUND/19/1996 before the Mamlatdar of Tiswadi Taluka, Panaji for declaration under Section 8A of the Goa Mundkars (Protection from Eviction) Act, 1975 (hereinafter referred to as the Act) against Rui Alvaro Francisco Ribeiro de Santana alias Rui Rebeiro do Santana, the legal representative of Armindo D'Souza, the opponent in the said case. Upon being served with the notice, it was brought to the notice of the Mamlatdar that the property in which the house in respect of which the petitioners/applicants claimed mundkarship was sold to the original respondents No.1 and 2 in this petition. Thereafter the original respondents No.1 and 2 were brought on record as opponents. The opponents in the said case filed an application dated 11.12.1998 by way of preliminary objection stating that the applicants have already been declared mundkars in respect of the house situated in the property surveyed under Chalta No. 45 of P.T. Sheet No.109 vide Order dated 19.11.1984 in Case No.MND/REG/2648/84. The Opponents on this ground claimed that the application was liable to be dismissed. They also sought liberty to file detailed reply in the event the application filed by the opponents was held

to be not maintainable. Along with the application filed by the Applicant No.1, the statement made by him as well as the Judgment dated 19th November, 1984 passed by the Mamlatdar in Case No. MND/REG/2648/84 were also produced. After hearing the parties, the Mamlatdar by Order dated 30.11.1999 upheld the objection raised by the opponents and dismissed the application filed by the Applicants. The Mamlatdar held that since the Applicants were mundkars of the house situated in Chalta No.45 of P.T. Sheet No.109 and they have been declared as such by Judgment and Order dated 19.11.1984, the application filed for declaration was not maintainable. This Order was challenged by the petitioners herein by filing appeal before the Deputy Collector at Panaji which was registered as Case No.MUND/DYC/APPL/49/99. The Deputy Collector, after hearing both the sides, remanded the matter to the Mamlatdar for holding inquiry as contemplated under the Act. While remanding the matter, the appellate authority also gave finding that the appellant No.1 was not having mundkarial house in the plot of land bearing Chalta No.45 of P.T. Sheet No. 109 of Panaji city and therefore the Judgment and Order dated 19.11.84 could not be enforced in law being inoperative and non-existing. This Judgment passed by the Deputy Collector was challenged by the opponents by filing revision application to the Administrative Tribunal which was registered as Mundkar Revision Application No.107/2000. The Administrative Tribunal by the impugned Judgment and Order dated 3.7.01

set aside the Judgment and Order passed by the Deputy Collector and maintained the Order passed by the Mamlatdar. This Judgment is the subject matter of challenge in the present petition.

3. Mr. Kantak, the learned Advocate appearing on behalf of the petitioners, submitted that the Respondent No.3 committed jurisdictional error in setting aside the Judgment more particularly the operative part of the Judgment passed by the Deputy Collector. Mr. Kantak fairly conceded that the Deputy Collector could not have given a finding regarding mundkarial right in respect of the house situated in Chalta No.45 of P.T. Sheet No.109. But according to him the Deputy Collector was absolutely justified in remanding the matter to the Mamlatdar for inquiry. He further submitted that in terms of the Mundkars Act and Rules framed thereunder, more particularly having regard to Rule 14, sub-rules (7), (8) and (9), no fault could be found with the operative part of the order passed by the Deputy Collector. The learned Counsel invited my attention to a Division Bench Judgment of this Court in the case of ***Smt. Gulabi Sangtu Devidas v. Smt. Prema Govind Gaonkar*** reported in **1995 (1) Goa L.T. 154** in which this Court has held that the scope of an inquiry under Section 29 and under Section 8A of the Act is entirely different. According to the learned Counsel the Mamlatdar had committed jurisdictional error in allowing the application fled by the opponents without holding an inquiry as

contemplated under the Rules. According to the learned counsel, the proper course would be to set aside both the Judgments passed by Administrative Tribunal as well as the Deputy Collector as well as the Order passed by the Mamlatdar and remand the matter to the Mamlatdar for holding inquiry upon the application filed by the petitioners.

4. Per contra, Mr. Kholkar, the learned counsel appearing for the respondents No.1 and 2, submitted that the Judgment passed by the Administrative Tribunal which is impugned in the present petition had been passed on correct appreciation of facts as well as law and there is absolutely no perversity in the finding given in the impugned Judgment. He, therefore, submitted that no interference is called for in exercise of writ jurisdiction against the impugned Judgment. The learned counsel further submitted that once the petitioner No.1 was registered as mundkar by Order dated 19.11.84 in respect of House existing in Chalta No.45 of P.T. Sheet No. 109, there was no question of the petitioners filing an application for declaration before the Mamlatdar since a person cannot be a mundkar in respect of two dwelling houses. He further submitted that no purpose would be served by setting aside the impugned Judgments and orders and by remanding the matter to the Mamlatdar in view of the Order dated 19.11.84 passed by the very Mamlatdar registering the petitioner No.1 as mundkar in respect of some other dwelling house. According to the learned

counsel, the Mamlatdar was perfectly justified in deciding the preliminary objection taken by the opponents therein and therefore the order passed by the Mamlatdar which has been maintained by the Administrative Tribunal cannot be said to have been passed by exercising jurisdiction illegally. He further submitted that the application filed by the petitioners for declaration of mundkar under Section 8A of the Act was not maintainable in view of the Order dated 19.11.1984 and therefore this is not a case in which this Court should exercise extraordinary jurisdiction under Arts.226 and 227 of the Constitution of India.

5. I have considered the submissions made by the learned counsel for the parties. At the outset it is pertinent to note that along with the application filed by the respondents No.1 and 2 herein for dismissal of the case filed by the petitioners, the respondents have stated that the applicants have been declared mundkars by the Mamlatdar by Order dated 19.11.84 in respect of the house situated in the property bearing chalta No.45 of P.T. Sheet No.109. In reply the petitioners have contended that they have purchased the said house by Sale Deed dated 28.08.1984. They have further stated that the Order dated 19.11.84 was passed pursuant to misrepresentation and fraud committed by the opponents in the said case. Therefore the question which arises for consideration is whether the Mamlatdar was justified in holding that the application filed for declaration

was not maintainable in view of the Order dated 19.11.84.

6. In view of the above facts, it is clear that the Order dated 19.11.84 upon which reliance was placed by the opponents was an order registering Applicant No.1/Petitioner No.1 as mundkar. The said order was passed under Section 29 of the Act. This Court, in the Judgment in the case of **Smt. Gulabi Sangtu Devidas (Supra)** has clearly held that the scope of an application under Section 8A and under Section 29 of the Act is entirely different. The entries made under S.29 of the Act are only presumptive in nature, while declaration under S.8A concludes the rights of the parties finally. In view of the ratio laid down in Smt. Gulabi's case, it is clear that the mere fact that a person has been registered as mundkar, cannot be taken as conclusive until that person is declared as mundkar in respect of the dwelling house. It is pertinent to note that the application which was before the Mamlatdar was one for declaration under S.8A of the Act. Therefore the Mamlatdar was obliged to hold an inquiry in terms of Rule 14, sub-rules (7), (8) and (9) of the Mundkars Rules. The question whether the applicants could be declared as mundkars of the respondents ought to have been decided only after holding an inquiry as provided under the Act and the Rules. Therefore, in my opinion, the Mamlatdar as well as the Administrative Tribunal were not justified in holding that the application filed by the applicants/petitioners was not maintainable in view

of Order dated 19.11.84. No doubt, the Deputy Collector was also not entitled to give any finding on merits which he chose to give and as rightly submitted by the learned counsel for the petitioners, this finding also deserves to be set aside. I am unable to accept the submission of Shri Kholkar that in view of Order dated 19.11.84 no purpose would be served in remanding the matter of the Mamlatdar since the Mamlatdar would be bound by the said Order dated 19.11.1984 and in the application filed by the applicants/petitioners, he has no jurisdiction to set aside the Judgment dated 19.11.84 which has become final. Having regard to the nature of the inquiry required to be conducted by the Mamlatdar, in my opinion, it is not necessary for the Mamlatdar to give any declaration about the validity of the Judgment dated 19.11.84. The Mamlatdar, in my opinion, ought to have held inquiry in the matter and decided the same after considering all the objections on behalf of the opponents before him.

7. In view of the above discussion, I find that the Respondent No.3 has committed jurisdictional error while passing the impugned Judgment and Order. There is also error of law apparent on the face of record which justifies interference of this Court in exercise of writ jurisdiction. Therefore the Judgments and Orders passed by the Administrative Tribunal, the Deputy Collector as well as the Mamlatdar are quashed and set aside and the matter is remanded to the Mamlatdar to decide the

application filed by the petitioners in accordance with law. The respondents No. 1 and 2 are also permitted to file a detailed reply to the application for declaration filed by the petitioners. The respondents No.1 and 2 are at liberty to take all objections to the application filed by the petitioners. Shri Kholkar has made a prayer for early disposal of the case filed before the Mamlatdar on the ground that the case is of the year 1996 and also on the ground that Respondent No.2 is a senior citizen. I find that the request is justified. Accordingly the Mamlatdar is directed to complete the inquiry within a period of six months from the date of receipt of the order from this Court. The Registry is directed to send the writ immediately. The parties to appear before the Mamlatdar on 13th April, 2006 at 3.00 p.m.

8. The petition stands disposed of in the aforesaid terms with no order as to costs.

A. P. LAVANDE, J.

sl.